



## **Case Summary**

Jearldine Heffernan (“Mother”) appeals the trial court’s order granting Bruce Heffernan’s (“Father”) motion to emancipate the parties’ eighteen-year-old son, Zachary Heffernan (“Zachary”). Mother argues that Father failed to meet his burden of proving that Zachary was emancipated. Concluding that the trial court properly determined that Zachary was emancipated under subsection (a)(3) of the emancipation statute, Indiana Code § 31-16-6-6, because Zachary was eighteen years old, was not attending nor enrolled in school for a four-month period of time, and was capable of supporting himself through employment, we affirm the judgment of the trial court.

## **Facts and Procedural History**

The parties’ son, Zachary, was born on January 12, 1988. In December 2004, Mother filed a petition for dissolution, and the trial court entered a dissolution decree in September 2005. Under the terms of the dissolution decree, the trial court awarded joint legal custody to Father and Mother, with physical custody to Mother, and ordered Father to pay child support.

During the summer of 2005, when Zachary was seventeen years old, he joined the National Guard and was away from Mother’s home for ten weeks while he completed National Guard basic training. Zachary attended a “conventional” high school until November 2005, when he was placed in a juvenile facility. Tr. p. 24. Zachary was committed to the juvenile facility from November 5, 2005, until January 12, 2006, when he turned eighteen years old. During his time in the juvenile facility, Zachary took classes and completed his GED.

After being released from the juvenile facility in January 2006, Zachary moved back in with Mother, worked full-time as an assembler at Mount Olive Manufacturing, and did not attend school. Zachary continued to work at Mount Olive until July 2006, when he had to complete additional National Guard training. On July 17, 2006, Zachary departed for “Advanced Individual Training” with the National Guard and received “official military orders” that same day. Father’s Ex. 1, p. 1. Zachary’s “Infantry Training” was completed under the command of the “United States Army Infantry Training Brigade” in Fort Benning, Georgia, and the training was scheduled to be completed on September 8, 2006. *Id.* at 2. Zachary is paid for being a member of the National Guard, and his rank is private, first class.

On April 17, 2006, Father filed a petition of emancipation regarding Zachary. The trial court—via its Master Commissioner—held a hearing on Father’s petition on August 29, 2006. Zachary was subpoenaed to appear at the hearing but did not attend due to his National Guard training. During the hearing, Father asked the trial court to emancipate Zachary because he had joined the National Guard and because he was eighteen years old, had not attended school, and had full-time employment. To support Father’s argument that Zachary was emancipated based upon his joining of the National Guard, Father introduced two letters into evidence. One letter was from an Indiana Army National Guard officer, confirming that Zachary was a member of the National Guard, and the other letter was from a United States Army captain, generally explaining the United States Army’s Infantry Training that Zachary was completing and inviting family members to the graduation scheduled for September 8, 2006.

In regard to Father's argument that Zachary was emancipated based on his full-time employment and lack of schooling, Father testified that he had "no idea" if Zachary had attended classes or was working during the spring of 2006 because Zachary had not had any contact with him. Tr. p. 18. Instead, Father presented testimony from Mother. Mother testified that from January 2006, following Zachary's release from the juvenile facility on his eighteenth birthday, until July 2006, when he went to Georgia for National Guard training, that Zachary lived with her, did not attend classes, and worked full time at Mount Olive Manufacturing. Mother was not aware of how much Zachary was paid for his job at the factory. Mother also testified that Zachary received compensation for his service in the National Guard, but she was unaware of the exact amount. In addition, Mother testified that upon Zachary's completion of his training in Fort Benning, he planned to come back to live with her and that he was enrolled at and going to attend classes at Ivy Tech.

On August 29, 2006, the Master Commissioner issued Findings and Recommendations, finding that Zachary was "deemed emancipated as of January 13, 2006." Appellant's App. p. 13. The trial court approved the Findings and entered judgment that same day. Mother then filed a motion to correct error, which the trial court denied. Mother now appeals.

### **Discussion and Decision**

Mother argues that the trial court erred by concluding that Zachary was emancipated. The trial court entered findings and conclusions *sua sponte*. When a court enters such findings, the specific findings control only as to the issues they cover, and a

general judgment standard applies to any issue upon which the court has not entered findings. *Borders v. Noel*, 800 N.E.2d 586, 588 (Ind. Ct. App. 2003). We may affirm a general judgment on any theory supported by the evidence. *Id.* The judgment will be reversed only if it is clearly erroneous. *Id.* In determining whether the findings or judgment are clearly erroneous, we consider only the evidence most favorable to the judgment. *Id.* In doing so, we neither reweigh evidence nor judge witness credibility. *Id.*

“What constitutes emancipation is a question of law, while whether an emancipation has occurred is a question of fact.” *Dunson v. Dunson*, 769 N.E.2d 1120, 1123 (Ind. 2002) (quotation omitted). Emancipation cannot be presumed; rather, the party seeking emancipation must establish it by competent evidence. *Id.* Indiana Code § 31-16-6-6 governs the termination of child support and emancipation of a child. The purpose of this statute “is to require that parents provide protection and support for the welfare of their children until the children reach the specified age or no longer require such care and support.” *Id.* at 1124. Specifically, Indiana Code § 31-16-6-6 provides:

(a) The duty to support a child under this chapter ceases when the child becomes twenty-one (21) years of age unless any of the following conditions occurs:

(1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in section 2(a)(1) of this chapter, terminates at the time of emancipation, although an order for educational needs may continue in effect until further order of the court.

(2) The child is incapacitated. In this case the child support continues during the incapacity or until further order of the court.

(3) The child:

(A) is at least eighteen (18) years of age;

(B) has not attended a secondary or postsecondary school for the prior four (4) months and is not enrolled in a secondary or postsecondary school; and

(C) is or is capable of supporting himself or herself through employment.

In this case the child support terminates upon the court's finding that the conditions prescribed in this subdivision exist. However, if the court finds that the conditions set forth in clauses (A) through (C) are met but that the child is only partially supporting or is capable of only partially supporting himself or herself, the court may order that support be modified instead of terminated.

(b) For purposes of determining if a child is emancipated under subsection (a)(1), if the court finds that the child:

(1) has joined the United States armed services;

(2) has married; or

(3) is not under the care or control of:

(A) either parent; or

(B) an individual or agency approved by the court;

the court shall find the child emancipated and terminate the child support.

According to the emancipation statute, there are four ways to establish emancipation, specifically subsections (a)(3), (b)(1), (b)(2), and (b)(3). Here, the trial court's order does not specify upon which subsection it relied when finding Zachary to be

emancipated.<sup>1</sup> Father, however, argues that the trial court's judgment is sustainable under subsection (a)(3).<sup>2</sup> We agree.

Subsection (a)(3) of the emancipation statute provides that the duty to support a child ceases if three requirements are met: (1) the child is at least eighteen years old; (2) the child has not attended school for the prior four months and is not enrolled in school; and (3) the child is or is capable of supporting himself through employment. Ind. Code § 31-16-6-6(a)(3). All three requirements must be met before emancipation is permissible. *Butrum v. Roman*, 803 N.E.2d 1139, 1144 (Ind. Ct. App. 2004), *reh'g denied, trans. denied*. The only requirement that Mother contests is that Father “failed to establish that Zachary was self-supporting.”<sup>3</sup> Appellant's Br. p. 5. Thus, we now turn to whether Zachary was or was capable of supporting himself.

“Before emancipation[,] a child must be or be capable of ‘supporting himself or herself through employment.’” *Butrum*, 803 N.E.2d at 1145 (quoting I.C. § 31-16-6-6(a)(3)(C)). Here, the evidence shows that from January 2006 to July 2006, Zachary was

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<sup>1</sup> We have previously noted that “the better practice in emancipation cases would be to make specific findings regarding the reasons for declaring the child to be emancipated.” *Willard v. Peak*, 834 N.E.2d 220, 225 (Ind. Ct. App. 2005), *reh'g denied*.

<sup>2</sup> Mother also appears to argue that Father failed to meet his burden of proving that Zachary was emancipated under subsection (b)(1) and (b)(3). Specifically, Mother contends that Zachary was not emancipated under subsection (b)(1) because the National Guard does not fall under the definition of the “United States armed services” as used in subsection (b)(1) of the emancipation statute and that Zachary was not emancipated under subsection (b)(3) because he was not self-supporting and was going to be living with her. Because we conclude that the evidence supports the trial court's order of emancipation under subsection (a)(3), we need not address these other subsections. *See Borders*, 800 N.E.2d at 592 (explaining that “we may affirm a general judgment on any theory supported by the evidence”).

<sup>3</sup> Mother does not argue that Zachary is not at least eighteen years old. Mother does indicate that Zachary was enrolled at Ivy Tech at the time of the hearing in August 2006. But she does not argue that Father failed to prove that between January 12, 2006, the date of Zachary's release from the juvenile facility, and August 29, 2006, the date of the hearing, that there was a four-month period of time where Zachary was neither attending school nor enrolled at Ivy Tech.

working full time as an assembler at Mount Olive Manufacturing and was paid for such work. In addition, Zachary received compensation for being a member of the National Guard and was at a training camp for the Guard at the time of the hearing. Thus, the evidence supports the conclusion that Zachary was capable of supporting himself through employment.<sup>4</sup> *See, e.g., Borders*, 800 N.E.2d at 591. Mother, however, contends that Father failed to show that Zachary was self-supporting because he did not challenge her testimony that Zachary was not capable of supporting himself. Mother's argument, however, amounts to a request to reweigh the evidence, which we cannot do. *See id.* at 588. Considering the evidence most favorable to the judgment and not reweighing the evidence or assessing witness credibility, we cannot conclude that the trial court's finding that Zachary was emancipated is clearly erroneous.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.

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<sup>4</sup> Although neither parent knew how much Zachary was being paid, it is reasonable to infer that full time work and National Guard membership would be enough to find Zachary capable of supporting himself through employment.